



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to:
OSB2000-0202

September 20, 2000

Mr. Bob Graham
Natural Resources Conservation Service
101 SW Main Street
Portland, Oregon 97204

Re: Informal Section 7 Consultation and Essential Fish Habitat Consultation on the Geiselman Pond
Creation Project near Bear Creek, Clackamas County, Oregon

Dear Mr. Graham:

On August 4, 2000, the National Marine Fisheries Service (NMFS) received a request from the Natural Resources Conservation Service (NRCS) for Endangered Species Act (ESA) section 7 informal consultation for funding of a pond creation project proposed by Mr. Geiselman near Bear Creek in Clackamas County, Oregon. In that letter, the NRCS determined that the Upper Willamette River steelhead (*Oncorhynchus mykiss*) and Upper Willamette River chinook salmon (*O. tshawytscha*), both listed as threatened under the ESA, may occur within the project area.

The proposed action is creation of two ponds 100' from Bear Creek, a tributary of the Pudding River. A 50' buffer of trees and vegetation will be maintained around each pond. The ponds will be drained in September through a vegetated swale into Bear Creek, prior to timing of habitat usage by chinook and steelhead in Bear Creek.

This consultation is undertaken in accordance with section 7(a)(2) of the Endangered Species Act (ESA) and its implementing regulations at 50 CFR Part 402. In addition, this document also serves as consultation on Essential Fish Habitat (EFH) under the Magnuson-Stevens Act and its implementing regulations at 50 CFR Part 600.

ESA SECTION 7 CONSULTATION

Upper Willamette River steelhead were listed under the ESA on March 25, 1999 (64 FR 14517). Upper Willamette River chinook salmon were listed under the ESA on March 24, 1999 (64 FR 14308). Critical habitat was designated for both these species on February 6, 2000 (65 FR 7764).



NMFS concurs with NRCS' determination that creation of the two ponds is not likely to adversely affect Upper Willamette River steelhead and Upper Willamette River chinook salmon for these reasons: 1) The work would be conducted a significant distance from Bear Creek; and 2) the proposed plantings will improve the quality and temperature of water draining from the property into Bear Creek. Thus, NMFS expects that any adverse effects of this project are discountable or insignificant, and that this project will have less than a negligible likelihood of adverse effect or incidental take of listed species.

ESSENTIAL FISH HABITAT CONSULTATION

The Pacific Fisheries Management Council (PFMC) is one of eight regional fishery management councils established under the Magnuson-Stevens Act. PFMC develops and carries out fisheries management plans for salmon, groundfish and coastal pelagic species off the coasts of Washington, Oregon and California, and recommends Pacific halibut harvest regulations to the International Pacific Halibut Commission.

As required by the Magnuson-Stevens Act, PFMC described and identified EFH in each of its fisheries management plans. EFH includes "those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity." All streams, lakes, ponds, wetlands, and other water bodies currently or historically accessible to salmon in Washington, Oregon, Idaho, and California are proposed for designation as EFH for chinook salmon and coho salmon.¹

The Magnuson-Stevens Act also established an EFH consultation process. Federal agencies are required to consult with NMFS on all actions that may adversely affect EFH. The NMFS interprets the scope of these consultations to include actions by Federal agencies that occur outside designated EFH, such as upstream or up slope, but nonetheless may have an adverse effect on habitat conditions necessary for the long-term survival of the species within EFH. The NMFS must provide conservation recommendations for any Federal or State activity that may adversely affect EFH. Within 30 days of receiving EFH conservation recommendations from the NMFS, Federal agencies must conclude EFH consultation by responding to NMFS with a written description of conservation measures the agency will use to avoid, mitigate or offset the impact of its action on EFH. If the Federal agency selects conservation measures that are inconsistent with the conservation recommendations of NMFS, the Federal agency must explain in writing its reasons for not following NMFS' recommendations.

The project area for the proposed project occurs within the area proposed for designation as EFH for chinook salmon. Information submitted by the NRCS in its biological assessment is sufficient to conclude that the effects of this project on proposed EFH is likely to be within the range of effects considered in the Endangered Species Act portion of this consultation.

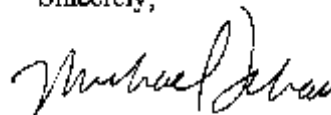
¹ Pacific Fishery Management Council, Amendment 14 to the Pacific Coast Salmon Plan. Appendix A: Description and Identification of Essential Fish Habitat, Adverse Impacts and Recommended Conservation Measures for Salmon (1999).

Based on that analysis, the NMFS finds that the Geiselman Pond Creation Project is unlikely to adversely affect EFH proposed for chinook salmon. Because the proposed project is not likely to adversely affect EFH, the NMFS has no conservation recommendations to make at this time.

This concludes ESA and EFH consultation for the Geiselman Pond Creation Project. The NRCS must reinitiate consultation if: 1) New information reveals effects of the agency action that may affect listed species or designated EFH in a manner or to an extent not considered in this consultation; 2) the agency action is subsequently modified in a manner that causes an effect to listed species or designated EFH not considered in this consultation; or, 3) new species are listed or EFH is designated that may be affected by the action.

Questions regarding this letter should be directed to Ben Meyer of my staff in the Oregon State Branch Office at (503) 230-5425.

Sincerely,


for William Stelle, Jr.
Regional Administrator



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The project area for the proposed project occurs within the area proposed for designation as EFH for chinook salmon. Information submitted by the NRCS in its biological assessment is sufficient to conclude that the effects of this project on proposed EFH is likely to be within the range of effects considered in the Endangered Species Act portion of this consultation.

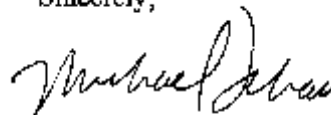
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Based on that analysis, the NMFS finds that the Geiselman Pond Creation Project is unlikely to adversely affect EFH proposed for chinook salmon. Because the proposed project is not likely to adversely affect EFH, the NMFS has no conservation recommendations to make at this time.

This concludes ESA and EFH consultation for the Geiselman Pond Creation Project. The NRCS must reinitiate consultation if: 1) New information reveals effects of the agency action that may affect listed species or designated EFH in a manner or to an extent not considered in this consultation; 2) the agency action is subsequently modified in a manner that causes an effect to listed species or designated EFH not considered in this consultation; or, 3) new species are listed or EFH is designated that may be affected by the action.

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Sincerely,


for William Stelle, Jr.
Regional Administrator

bcc: F/NWR - K. Cunningham
F/NWR4 - File Copy, B. Meyer, J.Turner

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File Log #: 8459
OSB § 7 #: OSB2000-0202
Nat. § 7 #: 2000\00979
EFH Log #: yes ~ chinook salmon